

FILED
Court of Appeals
Division II
State of Washington
3/14/2023 8:00 AM
No. 57828-0-II

IN THE WASHINGTON STATE COURT OF APPEALS, DIVISION II

Vitaliy Kertchen
Appellant,

vs.

Washington State Patrol
Respondent.

Appellant's Reply Brief

Vitaliy Kertchen #45183
Appellant *pro se*
917 S 10th St
Tacoma, WA 98405
253-905-8415
vitaliy@kertchenlaw.com

TABLE OF CONTENTS

ARGUMENT.....	1
A. RCW 43.43.710 is not unambiguous.	1
B. The CRPA is not an alternative exclusive means of record dissemination.	3
C. WSP should not receive any deference.	4
D. Plaintiff is entitled to an award of attorney fees.	5
CONCLUSION	5

TABLE OF AUTHORITIES

Cases

Columbia Riverkeeper v. Port of Vancouver USA, 188 Wn.2d
421, 395 P.3d 1031 (2017)..... 1

Leen v. Demopolis, 62 Wn. App. 473, 815 P.2d 269 (1991) 5

State v. Sinrud, 200 Wn. App. 643, 403 P.3d 96 (2017)..... 3, 5

Statutes

RCW 10.97 1

RCW 10.97.050 1, 4

RCW 43.43.710..... 1, 2, 3, 4

ARGUMENT

A. RCW 43.43.710 is not unambiguous.

WSP argues that RCW 43.43.710 only has one possible meaning and is not ambiguous. Response Brief at 14. Reading RCW 43.43.710 in a vacuum, perhaps WSP is correct. But the meaning of a statute requires more than just reading its text. Courts must also “consider the text of the provision, the context of the statute in which the provision is found, *related provisions*, and the statutory scheme as a whole.” *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 421, 435, 395 P.3d 1031 (2017) (emphasis added).

RCW 43.43.710 is in direct conflict with the Criminal Records Privacy Act (CRPA), RCW 10.97. The CRPA explicitly authorizes dissemination of certain information while RCW 43.43.710 explicitly forbids it. *See, e.g.*, RCW 10.97.050. That is a textbook case of direct conflict. In its Statement of the Case, WSP explains the difference between source documents and rap sheet transcripts. Response Brief at 5-7. It then explains

that rap sheet transcripts can be purchased through its public-facing WATCH application, while source documents are magically protected by RCW 43.43.710. *Id.* at 8-9.

Yet, WSP does not provide a convincing explanation for why a source document is protected by RCW 43.43.710 while a rap sheet transcript is not. If WSP's interpretation is correct, then both items would fit RCW 43.43.710's proscription on dissemination of "[i]nformation . . . relative to the commission of any crime." RCW 43.43.710 does not distinguish between a source document and a rap sheet transcript; it prohibits dissemination of all information. So why does WSP continue to disclose one but not the other? Because WSP follows the CRPA. And if the rap sheet transcript of a conviction record is subject to disclosure, then so is the source document.

Reading RCW 43.43.710 in a vacuum - as WSP urges - is not appropriate.

WSP also urges the Court to defer to the Public Records Exemptions Accountability Committee, but cites no legal

authority for why the Court should or even could give deference to this committee. Response Brief at 22-24. The committee is not an agency and is not entitled to deference.

B. The CRPA is not an alternative exclusive means of record dissemination.

Midway through its briefing, WSP seems to change gears by arguing that the CRPA acts as an alternative exclusive means of record dissemination to the PRA for criminal records. Response Brief at 28-30. But WSP didn't raise this argument below, relying solely on the purported exemption in RCW 43.43.710. Clerk's Papers (CP) at 39:18-20 ("The only exemption that State Patrol is claiming in this case is under RCW 43.43.710 and RCW 42.56.070(1) - State Patrol is not claiming an exemption under RCW 10.97."). Arguments not made below are waived on appeal. *State v. Sinrud*, 200 Wn. App. 643, 653, 403 P.3d 96 (2017).

C. WSP should not receive any deference.

WSP makes two related arguments. First, it argues that RCW 10.97.050(1)'s use of the word "may" means WSP can decide whether or not to disseminate a record. Response Brief at 32. Second, it argues that the Court should defer to WSP's interpretation of RCW 43.43.710. Response Brief at 32-33.

RCW 10.97.050(1)'s use of the word "may" does not grant WSP license to decide which records to disclose and which records not to disclose. There is no authority of law in the context of the PRA that gives agencies such awesome power. WSP quoting *Doe ex rel. Roe* that "an agency has the discretion to provide an exempt record" does not mean that an agency has discretion to withhold a record that is not exempt. Response Brief at 32.

The purpose of the PRA is government transparency. Letting a police agency decide which records are subject to transparency is a corruption of the PRA.

D. Plaintiff is entitled to an award of attorney fees.

WSP argues that the Court should follow federal law and foreclose an award of attorney fees to a *pro se* attorney.

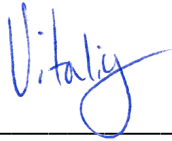
Response Brief at 35-38. Again, WSP did not raise this argument below and has waived it. *Sinrud*, 200 Wn. App. at 635. Additionally, Washington courts have already ruled that a *pro se* attorney is entitled to an award of fees. *Leen v. Demopolis*, 62 Wn. App. 473, 815 P.2d 269 (1991).

CONCLUSION

Based on the foregoing, the Court should find WSP in violation of the PRA and reverse and remand with instructions to impose penalties, fees, and costs.

This document contains __738__ words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted,



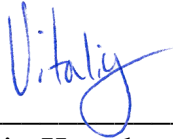
Vitaliy Kertchen #45183
Date: 3/13/23

DECLARATION OF SERVICE

I, Vitaliy Kertchen, being of sound age and mind, declare that on 3/13/23, I served this document on the Washington State Patrol by uploading it using the Court's e-filing application and emailing a copy of the document using that process to all registered users.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Respectfully submitted,



Vitaliy Kertchen #45183
Date: 3/13/23
Place: Tacoma, WA

KERTCHEN LAW, PLLC

March 13, 2023 - 6:39 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 57828-0
Appellate Court Case Title: Vitaliy Kertchen, Appellant v. Washington State Patrol, Respondent
Superior Court Case Number: 22-2-01136-7

The following documents have been uploaded:

- 578280_Briefs_20230313183922D2383655_3362.pdf
This File Contains:
Briefs - Appellants Reply
The Original File Name was reply brief.pdf

A copy of the uploaded files will be sent to:

- CRJSeaEF@atg.wa.gov
- justin.kato@atg.wa.gov

Comments:

Sender Name: Vitaliy Kertchen - Email: vitaliy@kertchenlaw.com
Address:
917 S 10TH ST
TACOMA, WA, 98405-4522
Phone: 253-905-8415

Note: The Filing Id is 20230313183922D2383655